

**COMPLAINT INVESTIGATION SUMMARY**

COMPLAINT NUMBER: 2210.05  
COMPLAINT INVESTIGATOR: Brian Simkins  
DATE OF COMPLAINT: January 26, 2005  
DATE OF REPORT: February 24, 2005  
REQUEST FOR RECONSIDERATION: n/a  
DATE OF CLOSURE: April 5, 2005

**COMPLAINT ISSUES:**

Whether the Rockville Community Schools and the Covered Bridge Special Education District violated:

511 IAC 7-27-9(b) by failing to make available to the student the variety of educational programs and services that are made available to non-disabled students, specifically by not providing physical education and extracurricular activities.

During the course of this investigation it was determined that 511 IAC 7-27-9(c) is the correct issue and better reflects the application of Article 7 to the facts herein.

**FINDINGS OF FACT:**

1. The Student has been identified as a student with an emotional disability and determined eligible for special education and related services.
2. The Student's individualized education program (IEP) dated May 17, 2004, indicates that the Student was to start the 2004-2005 school year in a full-day placement at the local junior-senior high school (the Student is in seventh grade) with increased time in special education classes. The Student's schedule included participation in the general education Health/Physical Education rotation class with Health class being held the first semester and Physical Education being held the second semester. The "Extent of Participation" section of the IEP indicates that the Student will participate in extracurricular activities. The IEP, dated May 17, 2004, does not specifically provide that physical education would not be provided.
3. The Student's case conference committee (CCC) convened on October 28, 2004, to review and revise the Student's IEP. The CCC mutually agreed to make a referral for enrollment at a nearby therapeutic day treatment program. The Student was accepted into the day treatment program where the Student attended in the mornings and returned to school for afternoon classes. The CCC convened again on December 10, 2004, to discuss the Student's performance and revise the IEP to reflect the Student's new schedule. The CCC agreed the Student would be in a self-contained special education program at school in the afternoons to work on academics and social skills. It was indicated in the "Extent of Participation" section of the IEP that the Student would participate in extracurricular activities but not in physical education. Due to the Student attending the day treatment program in the mornings, the Student no longer participated in Health/Physical Education because the morning is the only time the School schedules Physical Education. The Complainant agreed with the IEP, indicated by the Complainant's signature.

4. The Complainant does not specifically allege instances when the Student was denied opportunities to participate in extracurricular activities. Rather, during the course of this investigation it was determined that, in addition to physical education, the Complainant was alleging that the Student was not able to take other courses the school offers such as art and music. At the CCC meeting held on January 24, 2005, the Complainant presented a written letter revoking permission for the Student to attend the day treatment program effective immediately. The letter states that the Complainant wishes to have "...extracurricular activities such as P.E....implemented into [the Student's] IEP as soon as possible." At the time this complaint was filed, the School and the Complainant were still in the process of determining an agreed-upon placement and program for the Student.

## **CONCLUSIONS:**

Findings of Fact #2 through #4 indicate that the School did not fail to make physical education and extracurricular activities available to the Student. The Student was not able to attend physical education classes due to the Student's enrollment in a separate facility during the first half of the day when the School offered physical education classes. The Student's IEP indicates that the Complainant agreed to the Student's placement. With regard to art, music, and other non-academic educational classes, the Student's IEP states that the Student will attend a self-contained special education class in the afternoon to work on academic classes, such as English/Language Arts, Math, Social Studies, and Science. Therefore, a violation of 511 IAC 7-27-9(b) and (c) is not found.

**The Department of Education, Division of Exceptional Learners requires no corrective action based on the Findings of Fact and Conclusions listed above.**